

REMARKSAcknowledgement of Receipt

Applicant appreciates the Examiner's acknowledgement of its election with traverse of the species reducing food intolerance in its reply filed December 11, 2008.

Status of Claims

Applicant appreciates the Examiner's acknowledgement that the Amendments filed on December 11, 2008 have been received and entered. Applicant appreciates the Examiner's acknowledgement that claims 35-58 are currently pending examination for patentability. Herein, Applicant amends claim 35 and cancels claims 36-37 without prejudice or disclaimer of the subject matter thereof.

Claim 36 Rejected Under 35 U.S.C. 112, Second Paragraph

The Examiner has rejected claim 36 under 35 U.S.C. 112, second paragraph for the reasons of record. Merely to expedite prosecution and without prejudice or disclaimer of the subject matter therein, Applicant has herein canceled claim 36 thereby rendering this rejection moot. As such, Applicant respectfully requests withdrawal of the rejection of record against claim 36 under 35 U.S.C. 112, second paragraph.

Claims 35-38 Rejected Under 35 U.S.C. 102(b)

The Examiner has rejected claims 35-38 under 35 U.S.C. 102(b) for the reasons of record. Applicant has herein canceled claims 36 and 37 thereby rendering the rejection of these claims moot.

The Examiner has stated that the reference, "does not specifically teach using zingibain to reduce food intolerance and remove food intolerance." The Examiner further states, "the method of using ginger to flavor food is considered to inherently teach the claimed method because both the reference and the claimed invention are administering the same composition to food." The Examiner then concludes that, "on the administration of ginger to food, changes in food intolerance would have had to occur if applicant's invention functions as claimed."

Applicant agrees with the Examiner's conclusion that the reference does not teach the use of Zingibain to reduce or remove food intolerance but strongly disagrees that the use of ginger to flavor food inherently teaches the claimed method merely in light of the same composition being administered to food.

In support of this position, Applicant respectfully asserts that the level of Zingibain required to reduce the risk of food intolerance is much higher than that in the amount of ginger customarily used to flavor food. If the required amount of Zingibain to reduce the risk of food intolerance was administered to food, the corresponding amount of ginger would likely render the food inedible as the ginger-taste would be too strong. Additionally, food is often flavored with a ginger extract that includes minimal levels of Zingibain and, in many cases, absolutely none at all. Lastly, the levels of Zingibain in a ginger plant varies greatly depending on the time of year that the plant is harvested. In other words, it is not at all correct to say that there is a direct correlation with merely placing ginger on food and administering a sufficient amount of Zingibain to reduce the risk of food intolerance in a subject.

In light of the above, Applicant respectfully requests withdrawal of the rejections of record against claims 35-38 under 35 U.S.C. 102(b).

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Concluding Comments

In view of the foregoing, Applicant respectfully submits that all claims are in condition for allowance. In the event the Examiner has any questions regarding the Applicant's position, a telephone call to the undersigned representative is requested.

Respectfully submitted,

9.2.09
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